



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0080]

RIN 1625-AA11

Regulated Navigation Area; Southern Oahu Tsunami Vessel

Evacuation; Honolulu, HI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a permanent regulated navigation area (RNA), enforcement of which would take place only during times when a tsunami warning is issued for the Hawaiian Islands by the Pacific Tsunami Warning Center. Tsunami warnings require the evacuation of a large number of vessels from their respective harbors. Following the evacuation, these vessels must remain offshore until the emergency situation has passed and the harbors have been deemed safe for re-entry. Past tsunami warnings have created potentially dangerous offshore traffic congestion between commercial and recreational vessel traffic. Because of this, designated vessel traffic staging areas are necessary for a safe and orderly evacuation of Southern Oahu ports.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0080 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Lieutenant Commander Scott Whaley of the United States Coast Guard Sector Honolulu at 808-522-8264 ext.352 or Scott.O.Whaley@uscg.mil, respectively. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
RNA	Regulated Navigation Area

A. Public Participation and Request for Comments

We encourage you to respond to this notice by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. To submit your comment online, go to <http://www.regulations.gov>,

type the docket number USCG-2012-0080 in the "SEARCH" box, and then click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, inserting USCG-2012-0080 in the "SEARCH" box, and then click "SEARCH." You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting

the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain in detail why you believe a public meeting would be beneficial. If we determine that one would aid in solving this problem, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Basis and Purpose

The statutory basis for this rulemaking is 33 U.S.C. 1231, which gives the Coast Guard, under a delegation from the Secretary of Homeland Security, regulatory authority to enforce the Ports and Waterways Safety Act. A regulated navigation area is a water area within a defined boundary for which regulations for vessels navigating within the area have been established to mitigate hazardous conditions deemed to exist in that area. The purpose of this rulemaking is to provide greater safety for vessels and maritime commerce in the event of a tsunami threat.

Earthquakes off Chile and Japan in February 2010 and March 2011, respectively, resulted in tsunami threats to the Main Hawaiian Islands. These incidents emphasized the need to establish heightened safety measures, to ensure an orderly and

organized evacuation plan, in order to protect the infrastructure of the southern coast of Oahu, Hawaii, including Honolulu Harbor. Honolulu Harbor has only one entrance for large commercial vessels and is the principle harbor of Hawaii's hub and spoke maritime commerce system. If, during an emergency, a marine incident were to occur off the southern shore of Oahu, especially near the entrance of Honolulu Harbor, the results could be devastating to Hawaii's economy and the maritime commerce system and the constituencies that rely heavily upon the system's viability.

C. Discussion of Proposed Rule

In response to this risk, the Coast Guard proposes to establish a regulated navigation area designated as the Southern Oahu Tsunami Evacuation zone.

The Coast Guard has collaborated with the Hawaii Ocean Safety Team, the Industry Advisory Board, and other industry partners in the development of this rule. All recommendations have received careful consideration during the drafting of this rule. This rule accurately reflects the best practices as recommended by Hawaii's professional mariners.

In the event of a tsunami warning, the Coast Guard Captain of the Port for Honolulu (COTP) would notify the public that an enforcement period is in effect for the duration of the emergency for this RNA. At the conclusion of the event, the COTP would notify the public when the RNA enforcement period is

suspended or terminated.

During the enforcement period, the COTP would deploy Coast Guard assets to ensure participating commercial and recreational vessels move to and stay within separate staging areas, and seaward of the 50 fathom curve that covers near-shore waters less than 300 feet deep. Coast Guard plans, which could vary depending on specific conditions during an actual emergency, call for those staging areas to be separated by an exclusionary area. This exclusionary area would measure 3.7 nautical miles long by one (1) nautical mile wide, centering lengthwise and along a line running seaward at 208 degrees southwest of the Honolulu Harbor Range light. Commercial vessels would have to stay west of the exclusionary area, and recreational vessels would have to stay east of the exclusionary area.

A graphic of the regulated navigation area is in the docket (see the "Viewing comments and documents" section of this NPRM). It shows how we expect to separate commercial and recreational vessels when we would enforce the RNA, but under actual enforcement conditions local commanders could make alternate arrangements as those conditions warrant.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, because it would have an effect on the regulated public only in the rare circumstances of a tsunami threat, while at other times vessels will be able to transit the area freely. Therefore, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

2. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities because it would have an effect on the regulated public only in the rare circumstances of a tsunami threat, while at other times vessels will be able to transit the area freely.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you

think it qualifies and how and to what degree this rule would economically affect it. Before the effective period, we will issue maritime advisories widely available to the Oahu maritime, commercial, and tourist communities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Scott Whaley, Waterways Management Division, U.S. Coast Guard Sector Honolulu, at 808-522-8264 ext. 352, or at Scott.O.Whaley@uscg.mil via e-mail. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with

Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Heath Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. An action is a "significant energy action" under E.O. 13211 if the action is (1) an agency action, (2) which is or will lead to a final rule,

and is either (3a) a "significant regulatory action" under Executive Order 12866 AND is likely to have a significant adverse effect on the supply, distribution, or use of energy OR (3b) has been designated a "significant energy action" by the Administrator of the Office of Information and Regulatory Affairs. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, the Administrator of the Office of Information and Regulatory Affairs has not designated this as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary

consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph (34)(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1413 to read as follows:

§ 165.1413 Regulated navigation area; Southern Oahu Tsunami Evacuation; Honolulu, Hawaii.

(a) Location. The following area is a regulated navigation area (RNA): All waters contained within an area composing of an area on the southern side of Oahu, HI. The RNA extends from the surface of the water to the ocean floor and is bound by the following points: 21° 17' 14"N, 157° 55' 34"W, 21° 13' 30"N, 157° 55' 34"W; 21° 13' 30"N, 157° 48' 20"W; 21° 15' 10"N, 157° 48' 20"W thence westward along the 50 fathom curve to the beginning point. These coordinates are based upon the National Oceanic and Atmospheric Administration Coast Survey, Pacific Ocean, Oahu, Hawaii, chart 19357.

(b) Regulations. You may contact the Coast Guard on VHF Channel 16 (156.800 MHz) or at telephone number 808-842-2600, to obtain clarification on RNA transits and locations. Coast Guard patrol boats will be enforcing the RNA and providing on-scene direction. During the enforcement period persons and vessels wishing to remain inside the RNA must abide by the following stipulations:

(1) No person or vessel may enter into an exclusionary area 3.7 nautical miles long by one (1) nautical miles wide, centered lengthwise and along a line running seaward at 208 degrees southwest of Honolulu Harbor Front Range Light, except to transit to or from the staging areas or other areas outside the zone. Loitering or lingering in the exclusionary zone is prohibited.

(2) All recreational vessels wishing to remain in the RNA must transit to and stage east of the exclusionary area, while all commercial vessels wishing to remain in the RNA must transit to and stage west of the exclusionary area.

(3) All vessels staging in the RNA must be seaward of the 50 fathom (300 foot) curve.

(c) Enforcement period. Paragraph (b) of this section will be enforced only when a tsunami warning has been issued for the Hawaiian Islands by the Pacific Tsunami Warning Center. The COTP will notify the public of any enforcement, suspension of enforcement, or termination of enforcement through appropriate means to ensure the widest publicity, including the use of broadcast notice to mariners, Notices of implementation and press releases.

(d) Penalties. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: April 16, 2013

C. W. RAY
Rear Admiral, U.S. Coast Guard
Commander, Fourteenth Coast Guard District

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